



ST. 353/94

(2)

CA 1243/93

APPEAL PRISONER

2

Division Bench (Criminal)

No. 534Name समरFather's Name चंद्रशResident ग्राम - डोंगरीकुडाAge 34Sentenced to आजीवन कारावासon 1.10.96Under Section 302 T.P.C. by S. S. Jagdal pur. Bester.

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :- No

2. Date of which copy received :- 1.10.963. Date on which appeal sent :- 22.10.96

4. Whether the prisoner wished to be represented or not :-

Yes / No.

No. 534Name समरश. चंद्रशContinued in जिलाJail प्रथमक्षेत्र जगदलपुरNo. 453 / Octagon / Dated 22/10/96Forwarded to the CHIEF JUDICIAL MAGISTRATE Jagdal pur.

together with a copy of Judgement or order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent Central Distt / Sub-Jail.

Date of receipt in C. J. M. Office. 14/11/97Date of receipt of record to accompany. -Memo of Appeal of the Appellate Court. -No. 2(2) dated 15/11/97Forwarded to the Hble S. S. Jagdal**G. R. MAGISTRATE**

मुख्य न्यायिक दण्डाधिकारी

जगदलपुर

Date of receipt in Appellate Court -

आदेश पत्रक

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>DIVISION BENCH:</u> HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ CRIMINAL APPEAL NO. 1249 of 1997 Appellant : Samadu Vs. Respondent : State of Madhya Pradesh Shri Ranbir Singh Marhas, learned counsel for the appellant. Shri U.N.S.Deo, learned Govt. Advocate for the State/respondent. <u>ORAL JUDGMENT</u> (21.02.2006) <u>L.C.Bhadoo, J</u> This appeal is directed against the impugned judgment of conviction and order of sentence dated 01st October 1996 passed in S.T.No. 353/94 by the learned Sessions Judge, Jagdalpur, questioning the legality and correctness of the same whereby learned Sessions Judge after holding the accused/appellant guilty for causing homicidal death of Manbodh convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life. 2. The case of the prosecution, in brief, is that on 10.09.1994 at about 8.00 a.m. accused Samdu came to the residence of Jaidev Patel (PW-1) and informed that Manbodh has beaten him, at that time Manbodh also came there and said that accused Samdu was searching him having knife (<i>katri</i>) with-him to murder him. Samdu was standing at his door. Manbodh	

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	also went there and stood by the side of Samdu, when Manbodh took turn to go to his residence accused Samdu took out knife and stabbed him in the stomach, as result of which Manbodh got seriously injured and accused Samdu ran away. Manbodh took out the knife from his stomach and went to the house of his younger brother Samlu. Jaidev with the help of Dayaram, Peeluram, Madan and Chamru caught hold of accused Samdu and informed Kotwar - Lakhu. Manbodh succumbed to the injury on the way while he was being taken to the hospital on bullock cart. Receiving this report Station House Officer registered the case under Section 302 of the IPC under P-1, left for the scene of occurrence and prepared the Panchanama (P-2) of the dead body of Manbodh. Dead body of Manbodh was sent for postmortem examination to Maharani Hospital, Jagdalpur where Dr. C.S. Morey conducted the postmortem on the body of Manbodh and prepared the postmortem report (P-3). The investigating officer wrote a letter to the Assistant Surgeon, Maharani Hospital, Jagdalpur for seeking his opinion as to whether the injury found the body of Manbodh could be caused by the knife in question. The doctor gave his reply (P-4) in which he has opined that the injury found on the stomach of Manbodh can be caused by <i>Katri</i> in question. The weapon of offence - <i>Katri</i> was taken into possession under P-5 and the <i>lungi</i> and <i>gamcha</i> of Manbodh were taken into possession under P-6. After completion of the investigation charge sheet was filed in the Court of Chief Judicial Magistrate, Jagdalpur who in turn committed the case to the Sessions Judge, Jagdalpur for trial. 3. Prosecution in order to establish the charge against the accused examined as many as 8 witnesses. Statement of the accused was	

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	recorded under Section 313 of the Code of Criminal Procedure in which he denied the prosecution evidence appearing against him and stated that he is innocent. 4. Learned Sessions Judge after hearing the arguments advanced by the Additional Public Prosecutor and counsel for the accused/appellant convicted and sentenced the accused as mentioned in paragraph - 1 of this judgment. 5. We have heard Shri R.S. Marhas, learned counsel for the accused/appellant and Shri U.N.S. Deo, learned G.A. appearing on behalf of the State. 6. Homicidal death of Manbodh is not in dispute. 7. As far as involvement of the accused/appellant in the crime in question is concerned, crime in question was witnessed by P.W. 1 Jaidev and as per his evidence on the fateful day in the first instance accused Samdu came to his residence at about 8.00 a.m. and informed him that Manbodh has beaten him, however, in the meantime Manbodh (since deceased) also came there and started complaining that the accused has beaten him, on this Jaidev advised both of them to go to the Kotwar and report the matter whereupon Manbodh took turn to go to Sarpanch and Kotwar whereas accused was standing there. The accused took out knife, stabbed in the stomach of Manbodh and started running away from there, on which he raised scream. Hearing his scream Madan and Chamru came out from their respective houses, chased the accused and caught hold of him. Manbodh himself took out knife from his stomach and left for	

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	the house of his brother. Madan (PW-2) has corroborated the evidence of PW-1 Jaidev. PW-3 Bajeer has stated that he saw that Manbodh was being taken on a bullock cart by Jaidev and elder brother of Manbodh and at the instance of the villagers, he took the accused to the police station on his bicycle. PW-4 Bhagat has stated that Manbodh told him that accused has assaulted him with knife. The evidence of the above eyewitnesses stands corroborated by the medical evidence also as PW-5 Dr. C.S. Morey has stated that he conducted the postmortem on the body of Manbodh on 10.09.1994 and found that there was a stab wound near the umbilicus in the size of 2 x 1 c.m. and on dissection of the body he found that the muscles, intestine, blood vessels were cut and there was bleeding and blood was collected in the stomach. Therefore, in view of the above, involvement of the accused in attacking Manbodh with knife is established. 8. Learned counsel for the accused/appellant argued that from the evidence of PW-7 Shiv Shankar and PW-1 Jaidev it is evident that some quarrel had taken place between the accused and the deceased and in that process in the heat of passion, in a sudden quarrel, the accused assaulted the deceased without any intention to cause his death, therefore, the offence against the accused does not travel beyond Section 304-II of the IPC. 9. On the other hand, Shri U.N.S. Deo, learned G.A. for the State supported the impugned judgment of the trial Court. 10. In order to appreciate the arguments advanced by learned counsel for the accused/appellant we perused the evidence of PW-7 Shiv Shankar	

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	who has stated that at about 12.00 noon there was some altercation between the accused and the deceased in which both of them grappled each other and thereafter they went to their respective residences. This witness is not an eyewitness to the incident in which the accused stabbed the deceased. From his evidence it seems that he witnessed the scuffle between the two prior to the incident in question. PW-1 Jaidev is the eyewitness to the incident in which the accused stabbed deceased Manbodh with a knife. Perusal of the evidence of PW-1 Jaidev reveals that in the first instance accused went to him, started complaining that Manbodh has beaten him and in the meantime Manbodh also reached there and started complaining that accused Samdu has assaulted him and searching him with the knife and on which Jaidev advised both of them to go to Kotwar and Sarpanch. When Manbodh took turn to go to Sarpanch and Kotwar, at that moment accused Samdu took out knife and stabbed Manbodh on his stomach. 11. From the above evidence it is evident that at that time there was no scuffle or quarrel between the two. Moreover, Manbodh was unarmed and without any provocation in any manner by Manbodh, the accused all of a sudden attacked the deceased with knife on his stomach as a result of which deceased received fatal injuries and his intestine, blood vessels were cut and blood started oozing out of it. As per evidence of PW-5 Dr. C.S. Morey the injuries were sufficient in the ordinary course of nature to cause death. 12. Now the question is whether the accused was having any intention to cause death of deceased Manbodh while stabbing him? As per	

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	decision of the Hon'ble Supreme Court in the matter of <u>State of Rajasthan Vs. Dhool Singh</u> reported in <u>AIR 2004 S.C. 1264</u> in order to ascertain the intention of the accused, the Court is required to look into the nature of the injury, the part of the body where it is caused, the weapon of offence used in causing such injury which are the indicators of the fact whether the accused caused the death of the deceased with an intention of causing death or not. 13. Thus in the light of the above principle laid down by the Apex Court if we look into the facts of the instance case as has been mentioned earlier, the accused assaulted the deceased with knife on the vital part of the body, as a result of which the intestine and blood vessels were cut. Prior to this incident it appears from the evidence available on record that there was some quarrel between the accused and the deceased and Manbodh came unarmed to Jaidev (PW-1) whereas accused Samdu came with knife to him for complaining which shows that the accused came prepared in advance and when deceased Manbodh was going towards Kotwar and Sarpanch on the advice of PW-1 Jaidev, accused all of a sudden stabbed the deceased on his stomach with knife, therefore, the above conduct of the accused is indicative of the fact that the accused was having intention to cause death of deceased Manbodh by stabbing him on the vital part of the body. 14. In view of the foregoing reasons, we do not find any substance in the arguments advanced by learned counsel for the accused/appellant. The appeal is devoid of merits and the same is liable to be dismissed and is accordingly dismissed.	
	Sd/- L.C. Bhadoo Judge	Sd/- Dhirendra Mishra Judge

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